

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff.

V.

REGINALD OWENS,

Defendant.

Case No. 97cr2546-CAB; 16cv1564-CAB; 16cv1636-CAB

**ORDER: (1) LIFTING STAY; AND 2)
DENYING AS MOOT MOTION
UNDER 28 U.S.C. SECTION 2255 TO
VACATE, SET ASIDE OR
CORRECT A SENTENCE [Doc. No.
65]**

On June 21, 2016, Defendant/Petitioner filed a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct a sentence (the “2255 motion”). [Doc. No. 65.] On July 1, 2016, this Court issued an order staying the motion pending a decision by the Ninth Circuit in 14-10080, *United States v. Begay*. [Doc. No. 67.]

On April 20, 2018, Defendant/Petitioner filed a motion to lift the stay in light of the Supreme Court’s decision in *Sessions v. Dimaya*, __ S. Ct. __, 2018 WL 1800371 (U.S. Apr. 17, 2018). [97cr2546, Doc. No. 69.] On January 10, 2019, the Court denied the motion to lift the stay. [Doc. No. 74.]

On July 18, 2019, the Ninth Circuit Court of Appeals issued an order regarding an application for authorization to file a second or successive 28 U.S.C. §2255 motion filed in Ninth Circuit No. 18-71013. [Doc. No. 75.] The Ninth Circuit denied the motion as

1 unnecessary because the applicant (Petitioner Reginald Owen) already has a section 2255
2 motion pending in this Court. *Id.* The Ninth Circuit further ordered the proposed section
3 2255 motion be filed in this action as a motion to amend the currently pending 2255
4 motion. *Id.* That motion to amend is now filed in this action as docket no. 76.

5 On August 6, 2019, this Court issued an order lifting the stay to address the motion
6 to amend, and set a briefing schedule. [Doc. No. 77.] On September 12, 2019 this Court
7 issued an order denying the motion to amend and reinstating the stay. [Doc. No. 79.]

8 On October 21, 2019, Defendant filed a motion to reduce sentence pursuant to 18
9 U.S.C. §3582 (First Step Act). [Doc. No. 81.] Following further briefing by the
10 government and Defendant [Doc. Nos. 87, 90-92], the Court granted Defendant's motion
11 to reduce sentence under the First Step Act. [Doc. No. 93.] Following a telephonic
12 hearing [Doc. No. 95], the Court issued an Amended Judgment sentencing Defendant to a
13 term of imprisonment of time served as to all counts, concurrent [Doc. No. 96], and
14 issued an Abstract of Order for Defendant to be released from custody [Doc. No. 97].

15 Given that Defendant will henceforth be released from custody, the Court
16 **HEREBY ORDERS AS FOLLOWS:**

- 17 1. The stay as to Defendant's 2255 motion is **HEREBY LIFTED**;
- 18 2. The 2255 motion is **HEREBY DISMISSED AS MOOT**;
- 19 3. The corresponding civil cases, 16cv1564 and 16cv1636, are **HEREBY**
20 **DISMISSED WITHOUT PREJUDICE.**

21 **IT IS SO ORDERED.**

22 Dated: March 25, 2020

23 
24 Hon. Cathy Ann Bencivengo
25 United States District Judge

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